IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.406 of 2003

Date of decision : 15.11.2006

Khazan Singh and another .....Appellants

versus

Gram Panchayat Jharsa .....Respondent

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.Y.P.Malik, Advocate for the appellants

Mr.Sachin Mittal, Advocate for the respondents.

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JUDGMENT

HEMANT GUPTA, J. (oral)

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the learned Courts below, whereby their suit for declaration that plaintiffs are in possession of the suit land as owners having inherited ownership rights from their ancestors and by virtue of the operation of Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952, was dismissed.

It is the case of the appellants that proprietors of the village Jharsa had given the suit land to Sunder Dass son of Deva Dass with the promise that he will not be ejected from the said land and he should continue to cultivate the land without payment of any rent etc. After the death of Sunder Dass, the land was inherited by his sons Incha and Sri Gopal. There was partition amongst Incha and Sri Gopal. The appellants are the legal heirs of Incha. It is the case of the appellants that in the revenue record, the status of the plaintiffs has wrongly been recorded as that

of Dholidars. The suit land was let out by the proprietors of Shamlat Deh of village to Sunder Dass as a tenant without payment of any rent with the promise that he or his successors would never be ejected at any time.

Apart from other evidence, the plaintiffs have relied upon the judgment and Decree dated 24.1.1998, Exhibit P-13 & Exhibit P-14 respectively, passed in Civil Suit No.555 of 1995, titled Teja etc. versus Gram Panchayat. In the said judgment and decree, Teja, successor from other son of Sunder Dass, namely Sri Gopal was declared as owner in possession of the suit land after holding that Sunder Dass was the tenant without payment of any rent and not Dholidhar.

The said judgment was relied upon by the plaintiffs before the Courts below, but not taken into consideration on the ground that the judgment is not inter-parties. It was found that though the plaintiffs or their predecessors in-interest are continuing in possession since the year 1887, but the possession is that of Dhohlidar. In appeal, it was also held that the judgment, Exhibit P-13 is rendered in parallel proceedings and that the defendants did not properly defend the said suit, therefore, the plaintiffs cannot be said to acquire rights which are not proved to be available on the basis of evidence.

The following substantial question of law arises for consideration of this Court;

> "Whether the judgment and decree dated 24.1.1998, Exhibit P-13 and P-14 respectively, is binding on the defendants as the rights of the plaintiffs in the present proceedings as well as that of the plaintiffs in the said judgment and decree relate to the rights flowing from

the common ancestor Sunder Dass?

It has come on record that the plaintiff-appellants are claiming rights in pursuance of tenancy rights conferred on Sunder Dass by the proprietors. Similarly, the plaintiffs in Civil Suit No.555 of 1995, Exhibit P-13, were also claiming the rights through common ancestor Sunder Dass. Therefore, the reasoning given by the Courts below that the judgment and decree, Exhibit P-13 and P-14 is not inter-parties, is not correct. Though it was a separate suit in respect of one branch of heirs of Sunder Dass, but claim in both the suits is through Sunder Dass. Therefore, the judgment and decree, Exhibit P-13 & P-14 is binding on the defendant which cannot be ignored only for the reason that the plaintiffs were not party in the said suit.

The other reasoning given is that the defendant has not properly defended the suit, is again not tenable. It may be noticed that the said judgment dated 24.1.1998, Exhibit P-13 has attained finality. Having attained finality, the finding recorded by the learned First Appellate Court that the defendant did not defend the suit property, is based upon conjectures and surmises. The defendant has chosen not to dispute the judgment and decree Exhibit P-13 & P-14 in the last more than 8 years. Therefore, I am of the opinion that the finding recorded in the judgment and decree dated 24.1.1998, Exhibit P-13 & P-14 cannot be avoided by the defendant in the present proceedings.

Consequently, it is held that the judgment and decree dated 24.1.1998, Exhibit P-13 & P14 are binding on the defendant holding that Sunder Dass was inducted as tenant by the proprietors of the village without payment of rent and, therefore, the plaintiffs were entitled to the declaration

that they have acquired occupancy rights over the suit land.

Consequently, the judgment and decree passed by the Courts below is set-aside. The Suit is decreed to the effect that the plaintiffs are occupancy tenants in terms of the Punjab Occupancy Tenant (Vesting of Proprietary Rights) Act, 1952.

The appeal stands allowed accordingly.

15.11.2006 (HEMANT GUPTA)
*mohinder JUDGE